



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7163508

Date: MAY 27, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an entrepreneur and marketing specialist, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner established that he met only two of the ten initial evidentiary criteria for this classification, of which he must satisfy at least three.

On appeal, the Petitioner asserts that the Director failed to conduct a thorough review of the evidence. He maintains that he meets at least three of the initial evidentiary criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director for entry of a new decision.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner is an entrepreneur and marketing specialist who has worked in marketing and advertising in Brazil, co-founded a job search platform, established a non-profit organization, and written books and articles on various subjects. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner claims that he meets five of the ten criteria, relating to lesser nationally or internationally recognized awards, published material in major media, original contributions of major significance, leading or critical roles for organizations that have a distinguished reputation, and high salary or other remuneration. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (viii) and (ix).

The Director found that the Petitioner did not meet any of the five claimed criteria. On appeal, the Petitioner asserts that the Director either overlooked or erred in his assessment of evidence submitted with respect to the criteria.

Upon review, we agree that the Director's decision lacks a detailed analysis of the evidence submitted in support of the petition with respect to three of the five claimed criteria and does not acknowledge certain evidence and arguments the Petitioner submitted in response to a request for evidence (RFE). An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

As we do not find that the record as presently constituted establishes the Petitioner's eligibility for the benefit sought, we cannot sustain the appeal; however, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision consistent with our discussion below.

First, with respect to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Director stated in his request for evidence (RFE) that the Petitioner “provided several articles in which the [Petitioner] is mentioned or quoted as well as articles promoting [his] business.” The Director advised the Petitioner in the RFE that the submitted articles were not about him and his work in the field and could not satisfy this criterion. In the denial decision, the Director implied that the Petitioner did not address the criterion in the RFE response and concluded that the criterion had not been met.

However, the Petitioner did in fact address this criterion in the RFE response, noting that two of the three submitted articles interview him and discuss his educational and professional experience and career highlights, and therefore are about him and relating to his work in the field. The Petitioner raised valid points and we agree that the articles titled [REDACTED]

[REDACTED] and [REDACTED] are about the Petitioner and his work as an entrepreneur. Because the Director dismissed these published articles as promotional materials, he did not reach a determination as to whether they were published in professional or major trade publications or other major media, as required by 8 C.F.R. § 204.5(h)(3)(iii). Accordingly, we will remand this matter for the Director to re-examine the evidence submitted under this criterion, and to evaluate whether the articles mentioned above, which were published by several online media sources, satisfy all elements of this criterion.

As noted, the Petitioner also claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(v), which requires him to establish that he has made original contributions of major significance in the field. In his cover letter accompanying the petition, the Petitioner included a 30-page discussion of the evidence he was submitting under this criterion, which was attached as exhibits 36 through 97. These exhibits included evidence of his advertising campaigns, evidence related to the companies and non-profit organizations that he founded, a public installation that he co-created at [REDACTED] in Brazil, a prize program for young professionals in marketing that he established, books that he authored and published, and eight testimonial letters discussing his work.

In addressing this criterion in the RFE, the Director stated: “You have provided evidence of several successful advertising campaigns,” but did not acknowledge any of the other evidence provided with the initial submission. In response, counsel for the Petitioner expressed concern as to whether the Director had sufficiently reviewed the initial evidence, emphasized the relevance of some of that evidence, and highlighted passages from both previously submitted and newly submitted expert opinion letters.

In determining that the Petitioner did not satisfy this criterion, the Director acknowledged that the Petitioner submitted testimonial evidence in addition to “evidence of several successful advertising campaigns.” However, in addressing the testimonial evidence, the Director did not refer to any specific letters, and instead generally referenced “letters from customers” and letters “from college professors,” two categories that do not encompass the dozen or more letters provided. The Director also mentioned a need for corroborating evidence to support statements made in testimonials, but once again did not acknowledge the other documentary evidence included with the initial submission. Given the amount and type of evidence submitted in support of this criterion, we find the Director’s brief analysis does not adequately inform the Petitioner of his reasons for determining that the evidence submitted, considered individually and collectively, does not meet the regulatory language at 8 C.F.R.

§ 204.5(h)(3)(v). As this matter will be remanded, the Director should re-examine the evidence submitted to satisfy the original contributions criterion and make a new determination that takes into account this discussion.

Finally, with respect to the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Director emphasized that the Petitioner did not submit additional evidence relating to the criterion in response to the RFE. However, the record reflects that the Petitioner did in fact address this criterion in the RFE response, by clarifying the previously submitted evidence, and by submitting additional evidence. As the Director did not take the RFE response into account, he should make a new determination that considers all evidence in the record.

The Director also determined that the Petitioner did not submit sufficient evidence to meet the criteria relating to lesser nationally or internationally recognized prizes or awards at 8 C.F.R. § 204.5(h)(3)(i) and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). The Director's analysis of these two criteria considers the initial evidence and the Petitioner's response to the RFE and provided the Petitioner with a sufficient explanation of the Director's reasons for determining that the criteria had not been met.

If the Director determines that the Petitioner satisfies at least three criteria after re-examining the evidence related to the published materials, original contributions, and high salary criteria discussed above, his decision should include an analysis of the totality of the record evaluating whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.